IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 762 of 2001 (S/B)

Union of India …. Petitioner

Versus

Central Administrative Tribunal & others …… Respondents

Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

This writ petition ahs been filed by the petitioner challenging the judgment and order passed by Central Administrative Tribunal in OA No. 1103/99; Virendra Singh & others Vs Union of India & others.

Heard Mr. S.P. Aggarwal, learned counsel for the petitioner and Mr. Rajendra Dobhal, learned Advocate for respondents No. 2 to 22.

The respondents were casual labourers and they filed the aforesaid OA No. 1103/99 claiming the relief that they be conferred temporary status under the Scheme for Casual Labourers (Grant of Temporary Status and Regularisation) (hereinafter, we shall refer it as "1993 Scheme"). The Tribunal, after recording a finding that the respondents were in employment on the day of coming into force of the 1993 Scheme and had put in one year service and their names were registered with the Employment Exchange, therefore held that they were entitled for conferment of temporary status under the said 1993 Scheme.

The petitioner has challenged that conferment of temporary status on the ground that the respondents were not covered under the said 1993 Scheme for conferment of temporary status, as they were not engaged through Employment Exchange and mere registration is not sufficient. The petitioner had filed the Clarification dated 12.7.1994 (Annexure 7) issued by the Department of Personnel and Training, in which the following clarifications have been made:

Point	**Clarification**
Whether the causal employees who were not initially engaged through employment exchange are entitled to the benefit of temporary status.	Since it is mandatory to engage casual employees through employment exchange, the appointment of casual employees without employment exchange is irregular. Hence, such casual employees cannot be bestowed with temporary status.

From the perusal of the judgment of the Tribunal, it is clear that the Tribunal has relied on Excise Superintendent Malkapatnam, Krishna District A.P. Vs K.B.N. Visweshwara Rao & others reported in 1996 (6) SCC 216 as it was of three Judges Bench while the judgment dated 27.1.97 in the case of Passport Officer, Trivendrum & others Vs Venugopal C. & others in Civil Appeal No. 3368 of 1997 was of two Judges Bench. Since the respondents were registered with the Employment Exchange, therefore, the Members of the Tribunal were of the view in the light of the ratio of Excise Superintendent's Case that even if anyone of the applicants had not been sponsored for engagement by Employment Exchange, that would not militate against the claims of the applicants.

The Tribunal has dealt this issue in its judgment, which is quoted below:

> *"We hold in the light of the ratio of Excise Superintendent Malkapatnam's case (supra) that even if any one of the applicants had not been sponsored for engagement by employment exchange that would not militate against the claims of the applicants."*

The Central Administrative Tribunal (CAT) fell into error in not appreciating both the judgments in right perspective. The judgment of the Excise Superintendent (supra) was relating to employment of some candidates, who were not sponsored by the

Employment Exchange for employment while the judgment in Passport Officer's Case (Supra) is directly on the scheme, in which, it has been specifically held after noticing the clarifications that since, it was mandatory to engage casual employees through Employment Exchange, the appointment of casual employees without employment exchange is irregular and hence, such casual employees cannot be bestowed with temporary status and the Hon'ble Supreme Court set aside the order of the Central Administrative Tribunal and affirmed the order of the Government of India. Therefore, the Tribunal ought to have rejected the claim petition in view of the judgment in Passport Officer's case (supra), which is directly on the Scheme and should not have relied on Excise Superintendent's case (supra), which was on a different issue.

The Scheme of 1993 was introduced on 10th September, 1993, which ahs been made applicable to casual labourers in employment of the Department of Government of India and their attached and sub-ordinate offices on the date of issue of these orders. The temporary status shall entitle the casual labourers to the benefits enumerated in Clause 5 of the Scheme. The Scheme has been clarified by Office Memorandum dated 12th July, 1994 on several points including point No. 1, which is quoted above relating to conferment of temporary status to the casual labourers, who have been engaged only through Employment Exchange. By this clarification, the application of the Scheme has been restricted to only those casual laboures, who have been engaged through Employment Exchange. Therefore, those who have not been appointed through Employment Exchange though their names are registered with the Employment Exchange, stand excluded. Here in the present case, none of the respondents have been engaged through Employment Exchange. Therefore, in terms of the 1993 Scheme, they are not entitled for conferment of temporary status. Therefore, the judgment of the Central Administrative Tribunal (CAT) suffers from serious illegalities and cannot be sustained.

Therefore, we set aside the judgment of the Central Administrative Tribunal (CAT) dated 23rd March, 2001 and dismiss the claim petition of the respondents. The writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt. 20.05.2004
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